IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Amet Grah Nirman Sahakari Samiti,Amet, District Udaipur	vs.	Nagar Palika, Amet, District Udaipur.

S.B. Civil Second Appeal No.145/1989 against the judgment and decree dated 15.9.1989 passed by the learned Addl. District Judge, Rajsamand in Civil Appeal No.5/86.

Date of Judgment: March 29, 2007.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. G.Vaishnav for the appellant.
Mr. R.L. Jangid for the respondent.

BY THE COURT:

This appeal is against the judgment and decree of the trial court dated 29.10.1985 passed in Civil Original Suit No.65/83 by which the trial court dismissed the suit of the plaintiff for injunction and regular first appeal against the same judgment and decree was dismissed by the first appellate court in S.B.Civil Regular First Appeal No.5/86 by judgment and decree dated 15.9.1989.

Brief facts of the case are that the plaintiff filed the suit for permanent injunction alleging that the plaintiff-appellant is a registered cooperative society and it has its own immovable property wherein the plaintiff-appellant-society constructed several shops and this area of the

plaintiff-society is known as Laxmi Bazar. In the western side of this property, the plaintiff's office is situated near a well. Near the well and the office, according to the plaintiff, there was an old wall. In the plaint it is mentioned that the wall at some places is of sand only and some portion of the wall is already in dilapidated condition but according to the plait allegation itself, there is evidence of existence of wall. In the western side of the wall there was an agricultural land of 17 persons named in para 6 of the plaint. Out of this agricultural land of several khasara numbers, some of the land was got converted into residential land. The plaintiff-society apprehended that the wall in question may be removed by the defendant-Gram Panchayat and for that purpose, a case under Section 133,Cr.P.C. has been registered wherein an order was passed for removal of the wall. It is stated that the Sarpanch of Gram Panchayat, Amet or the Gram Panchayat, Amet have no right to remove the wall in question. The plaintiff served a notice under Section 79 of the Panchayat Act and thereafter filed the suit for injunction seeking relief that the defendant be restrained from removing the wall in question. The suit was filed on 10.10.1973.

The defendant-respondent-Gram Panchayat submitted written statement and stated that the defendant has right to remove the obstruction from the road. It is also specifically pleaded that the land in question where the plaintiff is saying that there is wall, is not belonging

to the plaintiff but it is belonging to the Gram Panchayat. It is stated by the defendant that the plaintiff's alleged wall is of sand only and how the way should be maintained, is within the domain of the Gram Panchayat. The plaintiff has no right to keep the obstruction on the road. It is also specifically pleaded that the plaintiff should have pleaded what right he has in closing the way connecting Laxmi Bazar with the other area of the village. Issues were framed and both the parties produced evidence. The trial court and the appellate court concurrently held that the plaintiff failed to prove his right to keep the wall which will separate Laxmi Bazar from portion of Jawahar Bazar.

It will be worthwhile to mention here that the plaintiff did not prove his title to the land in question by producing title deed. The plaintiff placed on record the blue prints of the maps of the site. Those maps were not found approved by any competent authority by the courts below. The appellate court upheld the finding of fact recorded by the trial court and held that the land in question is the land of way.

The appeal was admitted on 1.11.1990 by this Court after framing following substantial question of law:-

> "Whether the findings of the learned lower courts that the land over which the disputed wall has been constructed by the plaintiff-appellant belongs to the defendant-respondent and is a part of public street are perverse"

The learned counsel for the appellant vehemently submitted that the finding of the two courts below that the land in question is of the respondent-Gram Panchayat is absolutely perverse because the respondent-Gram Panchayat did not produce any title deed for the land in question. Contrary to it, the appellant has not only produced the witnesses to prove that the wall in question was old one and it was in existence even prior to purchase of the property by the plaintiff and further before the adjoining land was got converted by the other agriculturists whose names have been given in para 6 of the plaint. Therefore, in that situation, the Gram Panchayat had no right to remove the wall. However, it is admitted case that the wall in question has already been removed during pendency of the suit and the way is open. The learned counsel for the appellant submitted that even the trial court should have granted decree for mandatory injunction for restoration of the wall in question. The learned counsel for the appellant also pointed out that the appellant-plaintiff has placed on record the maps to disprove the fact. The defendant did not produce any document by which an inference can be drawn about the existence of open way.

The learned counsel for the respondent submitted that in fact no substantial question of law is involved in this appeal because of the simple reason that whether the way was closed or open is a pure

question of fact. The right of the plaintiff to close the way is also claimed only on the basis of any old wall on the road. In the plaint itself it is mentioned that the alleged wall was not only in dilapidated condition but was built of only sand. Even the maps produced by the plaintiff, sufficiently indicates that the wall which the plaintiff wants to keep is on the road, therefore, where relief is claimed on the basis of equities then also the two courts below have carefully examined the factual aspects and recorded the finding against the plaintiff. The finding has not vitiated because of misreading of document or from the evidence. Therefore, the appeal may be dismissed.

I considered the submissions of the learned counsel for the parties and perused the record also. In the entire plaint, the plaintiff has not very specifically pleaded the ownership of the wall in question. His case is that there was old wall made of sand and it was in dilapidated condition. The plaintiff placed on record a map which is not approved by any authority. The map only discloses that there is a way and this way is wide enough in front of the office of the plaintiff-society. The office is situated with a distance from the well in one side and with a distance from the plot in other side. From the map it appears that the way has not been allotted or kept reserved for other shops or any other purpose and it appears to be a way only from the maps produced by the plaintiff. Even if there was any obstruction of the nature mentioned

above, then in the course of planned development, if the Gram Panchayat exercised its power to remove the obstruction from the road, the Gram Panchayat was not only competent but was under obligation to develop the area of the village in such a way so that the ways are not obstructed. The appellant failed to prove how the two courts below misconstrued any of the documents or evidence and how the courts below were wrong in holding that the public street vests in the Gram Panchayat. Therefore, substantial question of law is decided against the appellant.

Therefore, the appeal of the appellant is dismissed. No order as to costs.

(PRAKASH TATIA),J.

mlt.